

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

In Re: DGC Heat and Air )  
Personal Property Account Number P-122958 ) Davidson County  
Tax Year 2007 )

## INITIAL DECISION AND ORDER DISMISSING APPEAL

### Statement of the Case

On November 21, 2007, the State Board of Equalization ("State Board") received the above-styled appeal by David Crookes, owner of DGC Heat/Air.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. The undersigned administrative judge conducted a jurisdictional hearing relative to this matter on January 17, 2008, in Nashville, Davidson County, Tennessee. Present at the hearing was David Crookes, Kenny Venson, from the Davidson County Assessor's Office; and Attorney Jenny Hayes from the Metropolitan Legal Department.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

DGC Heat/Air is a HVAC business located at 209 Louise Ave., Unit B, a location in Nashville and Davidson County. According to the tax records, the business has been in operation since 2003.

The initial issue to be decided is whether or not the State Board of Equalization has the jurisdiction to hear this taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. T.C.A. §§ 67-5-1401 & 67-5-1412 (b). A direct appeal to the State Board of Equalization is only permitted, if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. T.C.A. §§ 67-5-508(b)(2); 67-5-1412 (e). Nevertheless, the legislature has also provided that:

The taxpayer shall have a right to a hearing and determination to show **reasonable cause** for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1<sup>st</sup> of the year subsequent to the year in which the assessment is made (*emphasis added*).

In analyzing and reviewing T.C.A. § 67-5-1412 (e), the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions



to waive these requirements except where the failure to meet them is **due to illness or other circumstances beyond the taxpayer's control.** (*emphasis added*), *Associated Pipeline Contractors Inc.*, (Williamson County Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovets*, (Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Additionally, an Attorney General's Opinion<sup>1</sup> and numerous decisions has thoroughly discussed and espoused the primary principles by which any analysis of jurisdictional issues are conducted. Thus for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Davidson County Board of Equalization. It is the taxpayer's burden to prove that he is entitled to the requested relief.

Generally, except in the event of insufficient notice of a change in classification and/or valuation, a property assessment which is not appealed to the county board of equalization during its regular annual session becomes final. See T.C.A. §§ 67-5-1401 and 67-5-1412(b). In 1991, the General Assembly amended the law by affording a taxpayer the opportunity for a hearing before the State Board to demonstrate "reasonable cause" for failure to appeal the property in question to the county board of equalization (or for failure to appeal to the State Board in a timely manner).

Mr. Crookes candidly testified that he remembers filing a schedule in tax years 2003 and 2004 but did not fill out or file a schedule B<sup>2</sup> for tax years 2005, 2006 nor 2007. He also stated that while he received the Notice of Assessment (a copy was attached to his appeal) he did not read it and was ignorant as to what he was to do<sup>3</sup>. Mr. Crookes also stated that he only owns a van that is 5 or 8 years old and the normal tools of the trade. The administrative judge reminded the taxpayer that jurisdiction must be established prior to any discussion on value. Mr. Crookes had no further explanation for failing to follow the law.

In this case, Mr. Crookes' explanation does not establish "reasonable cause"<sup>4</sup> and, therefore, he has not met his burden of proof.<sup>5</sup>

#### ORDER

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

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<sup>1</sup> Written October 8, 1992, at 92-62 by Office of the Attorney General

<sup>2</sup> T.C.A. § 67-3-903

<sup>3</sup> It should be noted that the bottom of the Notice of Appraised Value, Classification and Assessed Value clearly states the steps a taxpayer is to take if he/she disagrees with the total assessed value.

<sup>4</sup> Reasonable cause has loosely been defined as circumstances beyond the control of the taxpayer. (*citations omitted*).

<sup>5</sup> Rules of the State Board of Equalization, Rule 0600-1-.11(1)

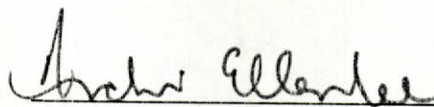


1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 13<sup>th</sup> day of March, 2008.



ANDREI ELLEN LEE  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. David Crookes  
Jenny Hayes, Esq.  
Jo Ann North, Assessor of Property